In the High Court of Punjab and Haryana at Chandigarh.

CWP No.13126 of 2000

Date of decision: 22.08.2007

Smt. Parvinder Mohindru ... Petitioner.

Versus

Shri Mata Mansa Devi Shrine Board,
Panchkula and another. ... Respondents.

CWP No.13612 of 2001

Date of decision:22.08.2007.

Smt.Parvinder Mohindru ... Petitioner.

Versus

Shri Mata Mansa Devi Shrine Board,
Panchkula and another.
.... Respondents.

Present: Mr.Amit Jhanji, Advocate,for the petitioner.

Mr.SS Meelu, Advocate,for respondent-Board.

PERMOD KOHLI, J. (Oral):

The petitioner herein has filed these two Civil Writ Petitions relating to condition of her appointment and subsequent termination. In Civil Writ Petition No.13126 of 2000, the petitioner sought quashment of the condition /stipulation in her appointment order dated 23.10.1998, wherein she has been appointed on contractual basis at a consolidated

salary. A further direction is sought to treat her as regularly appointed with effect from the date of initial appointment with all consequential benefits, seniority and salary etc. During the pendency of this writ petition, the petitioner was terminated from service vide order dated 21.05.2001. This order came to be assailed in the second Civil Writ Petition No.13612 of 2001. Since both the matters are interconnected, are taken up together for hearing and are being disposed of by this common order.

It is necessary to take note of the relevant facts leading to the filing of these petitions. Respondent No.1, Shri Mata Mansa Devi Shrine Board,Panchkula, is a statutory Board. The Board in its 5th meeting decided to recruit additional staff against sanctioned post. One post of Accountant, which was available with the Board in the sanctioned regular pay scale of Rs.1400-2600/-, was referred for appointment. A requisition was made to the employment exchange for sending the names of the eligible candidates for the post of Accountant vide requisition dated 08.06.1996. This was followed by a public notice dated 22.06.1998, whereunder the applications were invited from the eligible candidates with qualifications indicated therein. Though, in the requisition sent to the employment exchange the post was shown to be temporary, however, in the public notice, there was no such stipulation. The petitioner claiming to be duly qualified in terms of the advertisement, applied in response thereto to the competent authority. The Board also constituted a Selection Committee vide its order dated 14.07.1998. In all, eight candidates applied and faced the interview before the Selection Committee on 28.08.1998. One Sanjiv Ghai was placed at serial No.1 in the Select list, whereas the petitioner was placed at serial No.1 in the waiting list by the Selection Committee. It is the admitted case

of the parties that Sanjiv Ghai choose not to join and consequently the petitioner was selected and appointed vide appointment letter dated 22.10.1998. It is also pertinent to note that though the post advertised, was a regular sanctioned post, however, the appointment was made on contractual basis for a period of 89 days and on a consolidated salary of Rs.3000/- per month. The order also contains a stipulation that her services can be terminated at any time without assigning any reason. It is also not disputed that the petitioner joined the service on 24.10.1998. The petitioner's appointment was extended from time to time, right from the date of her initial appointment till 21.05.2001. The petitioner filed a representation dated 24.06.1999, asking for a regular appointment in view of her selection against a regular post by the competent Selection Committee duly constituted by the employer-respondent and in view of the fact that she was selected by a proper process for selection initiated by the Board. This representation was followed by two more representations dated 06.07.1999 and 30.11.1999. Receiving no response, the petitioner filed Civil Writ Petition No.13136 of 2000. This Court, while issuing notice of motion also directed maintenance of status-quo till the next date of hearing. It is on the basis of the aforesaid order that the petitioner continued in service. Later on, the order of status-quo came to be vacated by this Court vide order dated 13.03.2001. While vacating the ad interim order, this Court also made the following observations:-

> "However, we are of the view that this is not a fit case in which the interim directions dated 26.09.2000 should continue. Consequently, the interim directions

> aforesaid are hereby withdrawn. We may observe here that in case the post of Accountant which is to fall vacant on the acceptance of resignation of Shri Rajiv Aggarwal is to be filled up, the case of the petitioner be also considered for appointment against the said post, which will, however, be without prejudice to his rights in the present writ petition."

Consequent upon this order, the case of the petitioner was considered by the employer for appointment against the post of Accountant rendered vacant on account of resignation of one Rajiv Aggarwal, who was working with the respondent-employer. The petitioner was communicated vide letter endorsement No.716 dated 31.08.2005, the following decision:-

> "It has been decided that her case would be considered only when the case is withdrawn."

This fact was brought to the notice of the Court whereupon the Court passed the following order on 16.09.2006:-

> "During the course of arguments, counsel for the petitioner has shown to me a letter written by the Secretary, Shri Mata Mansa Devi Shrine Board, Panchkula, addressed to the Financial Commissioner and Secretary to

> Govt. of Haryana, Urban Development Department, Chandigarh, wherein it has been mentioned that the Board has decided that the case of the petitioner would be considered only when the case is withdrawn by the petitioner. Prima facie, this tantamounts to an unfair labour practice.
>
> As the respondent Board is ready to consider the case of the petitioner for appointment to the post of Accountant, therefore, the case of the petitioner shall be considered by the respondent Board within a period of two months from today and the decision taken thereon shall be intimated to the Court.
>
> Adjourned to 29.11.2005.

Pursuant to this order, the respondents-Board passed an order on 28.11.2005, wherein it has been stated that the letter dated 31.08.2005 was an internal process of the Board and has been issued inadvertently after the petitioner submitted an affidavit to this effect on 12.05.2004, wherein she offered to withdraw the case. It is further stipulated that this has not been the intention of the Board to harass or suppress any legitimate claim or right of the petitioner. The order says that the recruitment in the Board can be by any of the four modes and presently, there is no move to fill up the post. Whenever this post is to be filled up, the Board shall consider the petitioner. It is stated that thereafter, two posts of Accountants in Shri

Mata Mansa Devi Shrine Board have been advertised to be filled up on contractual basis for a period of 89 days at a consolidated salary of Rs.5000/- per month. While Civil Writ Petition No.13136 of 2000 was pending, the respondent-Board passed an order dated 21.05.2001, whereby the petitioner's services were dispensed with. The order reads as under:-

> "Contract period of Smt.Parvinder Mohindru, Accountant is hereby extended from 23.04.2001 to 21.05.2001. Her services are no longer required beyond this date as per the terms and conditions of her appointment letter."

This order is made the subject matter of challenge in Civil Writ Petition No.13612 of 2001.

I have heard the learned counsel for the parties at length and perused the record of the case.

Two important questions arise for consideration:

(1) Whether the employer is entitled to appoint the petitioner on contractual basis after having advertised the post for regular appointment and in a regular pay scale and making selection on that basis?

(2) Whether the termination of the petitioner is justified and permissible in law?

The respondents in their written statement in response to Civil

Writ Petition No.13136 of 2000 have specifically admitted that the post advertised vide advertisement notice dated 22.06.1998, was a regular post duly sanctioned by the Board. These admissions are contained in preliminary objections as also in paragraph 7 on merits of the reply. However, it has been stated that in view of the financial exigencies it was decided that the post in question be filled up on contractual basis on consolidated salary of Rs.3000/-, per month for which letter of appointment was issued. The petitioner has accepted the terms and conditions of appointment letter and has waived off her right to challenge the same at this belated stage. However, it is not disputed that the duly sanctioned post was/is available with the respondents and the selection of the petitioner was also meant for appointment against the regular post.

Learned counsel appearing for the respondents, however, submits that the post which was advertised and one more later on became available on account of resignation of Rajiv Aggarwal, are still lying vacant and have not been filled up. The respondents have also denied the fact that the Board decided to consider the case of the petitioner and a decision was taken to this effect and she was communicated to withdraw the writ petition. Since the petitioner was duly selected through a valid process of selection initiated by the respondent-Board in accordance with the mandate of Articles 14 and 16 of the Constitution of India by a duly constituted Selection Committee, thus, it was not open to the Board to make appointment on contractual basis and on a consolidated salary. Petitioner's representation against the conditions in the appointment letter which, inter-alia, makes the appointment of the petitioner as contractual and on consolidated salary has not been responded to. It is stated in the reply that

the representation has been rejected. However, neither any rejection order has been placed on record nor, communicated to the petitioner. No reasons whatsoever have been communicated for rejection of the representation of the petitioner. When the petitioner applied for the post, against a regular post in the respondent-Board, which carries the regular pay scale, it was legitimate expectation of the petitioner that in the event of her selection, she will be placed in a regular pay scale and there will be security of job. However, her appointment was made on contractual basis and on a consolidated salary. The defence of the respondent-Board with regard to the financial crises is bare statement in the reply. No details of financial status and financial health of the Board are given in the reply. This fact is also to be looked into in the light of letter of termination of the petitioner.

Learned counsel for the respondents relied upon the observations made by the Hon'ble Apex Court in Secretary, State of Karnataka and others Vs. Umadevi and others, 2006 (3) R.S.J., 572, wherein the Apex Court made the following observations:-

> "When a person enters a temporary employment or get engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of

> legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

Based upon the above observations, it is stated that the petitioner's plea for treating her as a regular employee of the respondent-Board, cannot be accepted as the same is not permissible in law. The contention is that the petitioner after having accepted the contractual appointment cannot challenge the same. It is not in dispute that the petitioner did join the post pursuant to the appointment, which contains stipulation that the appointment is contractual for 89 days. It is also an admitted fact that the petitioner's services were continued from 24.10.1998

to 21.05.2001, which clearly indicate that there is requirement of the job and the post is regular in nature and the petitioner has been allowed to continue on the post. Petitioner's initial appointment, which was meant for 89 days, was extended continuously without any break, she having been selected on regular post, made representation, which has not been turned down by any valid order. However, the fact remains that petitioner accepted the contractual appointment without any reservation. She joined her duties and continued in that capacity.

Petitioner's termination vide order dated 21.05.2001, Annexure P-11,though indicates that her services are no longer required beyond the date of this order, but the factual position is otherwise. Even after termination of her services, the respondents issued communication bearing Memo No.715, dated 31.08.2005,wherein they took a decision to consider the case of the petitioner subject to withdrawal of the writ petition. This communication itself is sufficient to belie the statement contained in the impugned termination order. This communication is followed by the decision of the Board to advertise two available vacancies again. Therefore, it is apparent from the record of the respondents that the condition incorporated in the impugned order to the effect that the petitioner's services are no longer required, is only a device to get rid of the petitioner by some means. The validity of the termination order is also to be considered in the light of the reply filed by the respondents in the second writ petition. In paragraph 8 of the written statement, the respondents have made the following averments:-

> “It is pertinent to state here that there are complaints against the petitioner for

> misusing his power, which resulted into losses to the respondent-board. Due to the act of the petitioner the stand taken by the board before the Hon'ble Supreme Court stands falsified. Taking into account the act done by the petitioner the competent authority taken a serious view and decided not to extend her term to appointment."

From the above statement, it becomes clear that the termination of the petitioner is not for the reasons contained in the impugned termination order, but on account of the reasons mentioned in the reply. This is a clear case where the petitioner has been removed from service with a bias and stigma. It is settled law that where the service of even a temporary employee are terminated on account of stigma, principles of natural justice are required to be observed. The Hon'ble Apex Court in the case of State of Punjab and another Vs. Sukh Raj Bahadur, (1968) 3 SCR, 234,has held as under:-

> "17. On a conspectus of these cases, the following propositions are clear:-
>
> (1) The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

(2) The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

(3) If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

(4) An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

(5) If there be a full-scale departmental enquiry envisaged Article 311 i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered,

any order of termination of service made thereafter will attract the operation of the said article.

Case of the petitioner falls under category 3 above, thus attracts principles of natural justice. The termination of the petitioner's service vide order dated 21.05.2001, Annexure P-11, is not sustainable in law and is hereby quashed. As a consequence of the quashment of the order of termination, petitioner is entitled to be reinstated in service forthwith. It is settled law that an ad hoc and temporary employee can not be replaced by another ad hoc/temporary employee. Respondent's case is not that they do not require the accountant at all or that they have no intention to fill up the vacancy at all. To the contrary, respondents have issued another advertisement to fill up two posts of Accountants on ad hoc/temporary basis. Hence, it can be safely concluded that there is requirement of Accountant with the respondent-Board. They can not be permitted to replace the petitioner by any other temporary/ad hoc arrangement. Therefore, petitioner shall be allowed to continue in service till the post is filled up on regular basis and/or petitioner is regularised in accordance with law.

In so far as the right and claim of petitioner for regularisation is concerned, Hon'ble Supreme Court in Umadevi's case (supra) has issued direction to consider the cases for regularisation of such of the employees who have completed more than ten years of service and whose initial appointment was not illegal by a duly constituted committee as a one time exception. This petitioner was duly selected but has not completed ten years of service but in view of her selection by the competent authority, she

is entitled to be considered for regular appointment as and when regular appointment is made for the post in question. In the event, she has crossed the upper age limit or may cross the age at the time of regular appointment, her age shall be relaxed.

Though petitioner has been re-inducted into service but she will not be entitled to emoluments during the period she remained out of service.

These petitions are accordingly allowed in the above manner. No order as to costs. A copy of this order be placed on the file of CWP No.13612 of 2001.

August 22, 2007. (PERMOD KOHLI)
BLS JUDGE

Whether to be referred to the Reporter: YES